

EXHIBIT 3

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
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4

5 W. A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA and)
8 OKLAHOMA SECRETARY OF THE)
9 ENVIRONMENT C. MILES TOLBERT,)
10 in his capacity as the)
11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)

13 Plaintiff,)

14 vs.)

4:05-CV-00329-TCK-SAJ

15 TYSON FOODS, INC., et al,)

16 Defendants.)

17 - - - - -
18 VOLUME II OF THE VIDEOTAPED
19 DEPOSITION OF BERTON FISHER, PhD, produced as a
20 witness on behalf of the Defendants in the above
21 styled and numbered cause, taken on the 4th day of
22 September, 2008, in the City of Tulsa, County of
23 Tulsa, State of Oklahoma, before me, Lisa A.
24 Steinmeyer, a Certified Shorthand Reporter, duly
25 certified under and by virtue of the laws of the
State of Oklahoma.

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1 in the plant matter and actually transport it and
2 deposit it as more soluble phosphorus in manure in
3 or near water courses?

4 MR. GARREN: Object to form.

5 Q That's not part of your evaluation? 11:50AM

6 A It is not.

7 Q Let's see. Your report, Page 4, you covered
8 this with Mr. George yesterday. You said the only
9 contaminants of concern in the Illinois River
10 watershed are phosphorus and bacteria; correct? 11:51AM

11 A That's what I said, yes.

12 Q All right. What is the form of phosphorus
13 that is the contaminant of concern?

14 A All forms of phosphorus are going to be the
15 contaminant of concern because phosphorus undergoes 11:51AM
16 numerous reactions with environmental media. So
17 adding phosphorus in one form today, it can turn
18 into a form that's taken up by algae tomorrow in a
19 stream.

20 Q With the bulk of the water quality data, is 11:51AM
21 this most oftenly expressed as total P?

22 A That's correct.

23 Q Okay. So when -- there have been a lot of
24 discussion in the last two days about phosphorus,
25 phosphorus, phosphorus. What typically you and 11:51AM

1 When you and I started talking earlier, I thought
2 the Record was pretty clear that the constituents of
3 concern are phosphorus and bacteria. When you say
4 constituents in the context of your statement on
5 Page 50, are you referring to anything else other 02:30PM
6 than phosphorus and bacteria?

7 A These would be the entirety of the suite of
8 chemicals pretty much from poultry litter.

9 Q Are you claiming that there is water in the
10 Illinois River watershed that is polluted by any 02:30PM
11 constituent other than phosphorus and bacteria?

12 MR. GARREN: Object to the form.

13 A Okay. Am I claiming that there are any
14 constituents of concern other than phosphorus and
15 bacteria? 02:30PM

16 Q Yeah.

17 A No.

18 Q All right. Opinion 21, you refer to -- or I'm
19 going to modify the word, attenuation. What is
20 attenuation or attenuated mean? 02:31PM

21 A To attenuate is to diminish. The peculiar
22 aspect of Karst terrain, which is what this speaks
23 to, is that materials in Karst, there are very --
24 there can be very large fractures at depth. Those
25 fractures permit a flow of water much as through a 02:31PM

1 **A** I don't know what -- I'm sorry. I don't know
2 what to assume, Mr. Elrod. I just can report what I
3 saw in those fields.

7 **A** That's correct.

11 Q Does that mean that I don't have to be
12 concerned about preparing a defense for metals?

15	Q	Yes, sir.	04:54PM
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17 Q And does that assume that I do not have to
18 prepare a defense for my client regarding hormones?

[illegible]

25 MR. GARREN: Object to form. 04:55PM

1 **A** I don't believe you do.

2 **Q** And then does that also assume that I do not
3 have to prepare a defense for my client regarding
4 nitrogen?

5 MR. GARREN: Object to form. 04:55PM

6 **Q** Especially nitrogen impact on groundwater?

7 MR. GARREN: Same objection.

8 **A** I don't know. I don't believe so.

9 **Q** And does that also -- can I also assume that I
10 do not have to prepare a defense for my client on 04:55PM
11 the issue of antimicrobial effects?

12 MR. GARREN: Object to form.

13 **A** Could you define antimicrobial effects?

14 **Q** I can't any better than I just said it.

15 **A** Okay. If you are talking about a defense of 04:55PM
16 your client with respect to the presence of
17 antibiotic materials in litter --

18 **Q** Yes, sir.

19 **A** -- I don't believe so.

20 **Q** All right. If you'd look at your report on 04:55PM
21 Table 1, I didn't note the page.

22 **A** Table 1?

23 **Q** Yes, sir. It should be the growth in chicken
24 production in the Illinois River watershed.

25 **A** I have that, yes, sir. 04:56PM